MINTZ LEVIN

Russell H. Fox | 202 434 7483 | rfox@mintz.com

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-434-7300
202-434-7400 fax
www.mintz.com

September 8, 2006

SUBMITTED ELECTRONICALLY

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Wireless Operations in the 3650-3700 MHz Band, ET Docket No. 04-151; Rules for Wireless Broadband Services in the 3650-3700 MHz Band; WT Docket No. 05-96; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band; ET Docket No. 02-380; Amendment of the Commission's Rules With Regard to the 3650-3700 MHz Government Transfer Band, ET Docket No. 98-237; NOTICE OF ORAL EX PARTE COMMUNICATIONS OF COVAD COMMUNICATIONS GROUP, INC. ("COVAD")

Dear Ms. Dortch:

Pursuant to the provisions of Section 1.1206 of the rules of the Federal Communications Commission ("FCC" or "Commission"), Covad submits this notification of *ex parte* communication between its staff and representatives of the FCC. In particular, on September 8 2006, Christopher McKee of Covad and the undersigned counsel met with the following members of the FCC's Office of Engineering and Technology ("OET") staff: Julius Knapp, Jeffrey Dygert and Ira Keltz.

The attached presentation, which supports Covad's written *ex parte* communication of August 22, 2006, was circulated at the meeting and discussed.

If there are questions regarding the foregoing or the attached, please contact the undersigned.

Very truly yours,

/s/ Russell H. Fox

Russell H. Fox

Attachment

cc: (each electronically with attachments)
Julius Knapp
Jeffrey Dygert
Ira Keltz

TRANSFORMING COMMUNICATIONS THROUGH BROADBAND INNOVATION

Deployment-Based Hybrid Spectrum Use Proposal for the 3.65 GHz Band

September 2006

COVAD®

Introduction

- Covad, through its NextWeb subsidiary, provides wireless broadband services to approximately 3,000 business customers in CA and NV – using primarily 5.8 GHz unlicensed spectrum.
- The 3.65 GHz Band holds significant promise for much needed competitive broadband services if certain challenges can be overcome.
- The auction and unlicensed models of spectrum use have various drawbacks:
  - Auctions: COST, delayed deployment, incumbent dominance
  - Unlicensed: QOS/interference potential, investor confidence
- A hybrid approach preserves the benefits of an unlicensed model, while at the same time grants reasonable protection against interference to those who actually deploy facilities and provide service to the public.

The Hybrid Alternative

- A deployment based hybrid spectrum use alternative has two major elements:
  - minimum spectral efficiency requirements and engineering standards (technology neutral); and
  - prior coordination requirement, with protection of existing registered operations
- Technical Requirements:
  - 3.65 GHz subdivided into seven 7 MHz sub-bands (21 MHz max per market)
    - Registrants must use set channelization plan
    - Accommodates the two bandwidths contemplated by the WiMax standard – 3.5 and 7 MHz channels
  - Use of sectorized antennas required in top 200 markets
    - Allows more intensive spectrum use, facilitates coordination by multiple operators
  - Minimum spectrum efficiency requirements (e.g., 802.16e bits per hertz benchmark)
    - Avoids inefficient spectrum usage and deployment of outmoded technology
- Coordination Regime
  - Initial registration required
  - Construction certification due within 90 days, or registration automatically cancelled
  - Interference protection in the form of prior coordination requirement for later entrants
  - Use it or lose it
  - Annual filing requirement/regulatory fees
  - Streamlined mediation of disputes by coordinator

Public Interest Benefits of a Hybrid Approach

- Encourages rapid deployment of competitive and innovative services
- Facilitates multiple users and uses of the spectrum
- Maximizes ability to use the spectrum without harmful interference in a way that evolves with technology
- Ensures efficient use of the spectrum and avoids a “tragedy of the commons”
- Avoids the barrier to entry inherent with auctioning
- Facilitates FCC tracking of progress and spectrum use
- The approach is a reasonable and incremental outgrowth of established and time tested spectrum management policies